

EXHIBIT E

David Ciavarella, M.D.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, EAST COUNTY REGIONAL CENTER

- - -

MARY GIORDANO, individually :
and on Behalf of the Estate :
of Jacqueline Keith and :
other qualified survivors, :
Plaintiffs, :
vs. : Case No. 37-2011-
00069363-CU-PO-EC

:

C.R. BARD, INC., a :
corporation, BARD PERIPHERAL :
VASCULAR INC., a corporation, :
THOMAS BRANNIGAN, M.D., an :
individual, FRANKLIN KALMAR, :
M.D., an individual, JULIE :
LAIDIG, M.D., an individual, :
SHARP GROSSMONT HOSPITAL, a :
corporation, SHARP :
HEALTHCARE, a corporation, :
and DOES 1 through 100 :
inclusive, :
Defendants. :

- - -

Tuesday, November 12, 2013

- - -

Videotaped Deposition of DAVID
CIAVARELLA, M.D., held at Short Hills Hilton, 41
John F. Kennedy Parkway, Short Hills, New
Jersey, on the above date, beginning at 9:43 a.m.,
before Kimberly A. Otherwise, a Certified
Realtime Reporter and Notary Public.

- - -

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1 I N D E X

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4	By Mr. Lopez.....	11, 384
5	By Ms. Daly.....	380

7 E X H I B I T S

8 (Attached.)

9	No.	Description	Page
10	Ciavarella 20	Curriculum vitae of David J. Ciavarella, M.D.	10
11	Ciavarella 21	Bard Regulatory Affairs Manual, Title: Product Remedial Actions, Bates Nos. BPV-17-01-00024667-684	75
12	Ciavarella 22	Spreadsheet, Bates Nos. BPVEFI LTER-01-00010268-289	115
13	Ciavarella 23	E-mail, 4/23/04, to Weiland and others from Carr, with attachments, Bates Nos. BPVE-01-00268632-658	119
14	Ciavarella 24	Group of documents, Bates No. BPVE-01-00542149	122
15	Ciavarella 25	E-mail string, 11/7/05-11/14/05, with attachments, Bates Nos. BPVE-01-01510714-58 and BPVE-01-01510769-96	142

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1	Ciavarella 26	Spreadsheet, Bates Nos. 166
		BPVE-01-01631586-606 and
2		BPVE-01-01631612-39 and
		BPVE-01-01631650-52 and
3		BPVE-01-01631664-70 and
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5		BPVEFILTER-01-00050487
6	Ciavarella 28	PowerPoint presentation 182
		entitled "Filters
7		Complaint History, Data
		as of 7/31/07," Bates No.
8		BPV-17-01-00180239
9	Ciavarella 29	Document entitled "NMT 189
		Medical, Inc., R&D
10		Technical Report," 9/1/00,
		Bates Nos. BPVE-01-
11		00054540-546
12	Ciavarella 30	Memorandum, 4/19/05, to 210
		Ring/Weiland from Ganser,
13		Bates Nos. BPVE-01-
		00434275-276
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15		Ring/Weiland from Ganser,
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16		0017-0083-84
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18		Nos. BPVE-01-00420379-84
19	Ciavarella 33	E-mail string, 12/20/05- 265
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20		BPVE-01-00028224-225
21	Ciavarella 34	Memo, 12/15/04, to 285
		Passero from Lehmann,
22		with attachment, Bates
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1	Ciavarella 35	Document entitled	287
2		"Health Hazard	
3		Evaluation," 12/17/04,	
4	Ciavarella 36	Bates Nos. BPVE-01-	
5		00245379-383	
6		E-mail, 2/7/05, to	288
7		Chanduszko and others	
8		from Hudnall, with	
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10		BPVE-01-00003679-681	
11	Ciavarella 37	Memo, 3/10/04, to Uelmen	95
12		from Lehmann, with	
13		attachment, Bates Nos.	
14		BPVE-01-00510989-11000	
15			
16	Ciavarella 38	Document entitled	308
17		"Updated Health Hazard	
18		Evaluation," 6/30/04,	
19		Bates Nos. BPVE-01-	
20		00435698-701	
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22	Ciavarella 39	Document entitled	351
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24		Evaluation," 7/9/04,	
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		00004730-733	
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		"Health Hazard	
		Evaluation," 2/15/06,	
		Bates Nos. BPVEFILTER-	
		01-00008355-357	
	Ciavarella 41	PowerPoint presentation	371
		entitled "Bard Peripheral	
		Vascular Filter Franchise	
		Review," May 6, 2008,	
		Bates Nos. BPVE-01-	
		00622862-900	

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1 important for a doctor to know about as to
2 whether or not he's going to choose to use
3 my product or not use my product, I've got
4 to put the information out there and let
5 the doctor make the decision?")

6 BY MR. LOPEZ:

7 Q Am I right about that?

8 A Well, yes, the company needs to put
9 the information out there in a way that it is
10 relevant, understandable, not confusing to a
11 physician about its product.

12 Q And information that you know could
13 influence a physician to either use or not use
14 the product for safety reasons, you have got to
15 do that?

16 MS. DALY: Object to the form.

17 BY MR. LOPEZ:

18 Q There is no higher duty that a device
19 company has than to make sure the doctor has all
20 the information he needs to decide whether or
21 not he's going to put his patient at risk of
22 this treatment, this device, or maybe he would
23 choose something else?

24 A Yes.

25 MS. DALY: Object to the form.

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1 A Yeah.

2 Q And, by the way, one of the problems
3 with MAUDE -- forget MAUDE. One of the problems
4 with information that's being relayed from the
5 clinicians that are putting products in is that
6 the number you're getting is probably
7 significant lower than what's actually
8 happening; isn't that right?

9 A Could be, yeah, could be.

10 Q I mean, that's a general consensus
11 among -- at FDA, with pharmaceutical companies,
12 medical device companies, and I think you even
13 said so yourself in a document that sometimes
14 you're only getting 1 to 5 percent of what's
15 actually happening?

16 A Yeah, it's very hard to tell. You get
17 underreporting. You get reporting of unrelated
18 things. You get incomplete information.

19 Q Yeah, but --

20 A It's very variable.

21 Q But if you're looking at a device and
22 you're looking at this information that's coming
23 in, you have to wonder, as you're looking at
24 this information coming in, you know, there's
25 been three deaths with the Recovery filter.

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1 BY MR. LOPEZ:

2 Q Would it be reasonable for a doctor
3 who's considering using a Recovery filter in
4 2005 to want to know whether or not that device
5 had a higher failure rate than other devices?

6 MS. DALY: Same objections.

7 THE WITNESS: Yes.

8 BY MR. LOPEZ:

9 Q Would you also agree that he couldn't
10 do a proper analysis without knowing all of the
11 risks, not only the type of risk but the
12 frequency of risk?

13 MS. DALY: Same objections.

14 THE WITNESS: Well, if he --
15 sure, if he didn't have the information.

16 BY MR. LOPEZ:

17 Q Okay. Now, let's look at these and
18 compare 30 -- 30 and 31. We already talked
19 about some of this. Now, let's go down -- let's
20 look at the numbers again. So -- by the way,
21 over that six-month period of time, 6,000 more
22 units sold? I'm sorry. Actually, over a
23 four-month period of time another 6,000 units
24 sold. 27,000 as of 4/15, 33,000 as of 8/2,
25 actually less than four months.

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1 CERTIFICATE

2

3 I HEREBY CERTIFY that the witness
4 was duly sworn by me and that the deposition is
5 a true record of the testimony given by the
6 witness.

7 It was requested before
8 completion of the deposition that the witness,
9 DAVID CIAVARELLA, M.D., have the opportunity to
10 read and sign the deposition transcript.

11

12

13

KIMBERLY A. OVERWISE

14

Certified Realtime Reporter

Notary Public

15

Dated: November 26, 2013

16

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18 (The foregoing certification of
19 this transcript does not apply to any
20 reproduction of the same by any means, unless
21 under the direct control and/or supervision of
22 the certifying reporter.)

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